

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

April 15, 2004

Opinion No. 04-065

Joint Agreement for Emergency Communication Services

QUESTION

Is a 911 emergency communications district, created under Tenn. Code Ann. §§ 7-86-101, *et seq.*, authorized to enter into an agreement with the Sequatchie County government for the purpose of creating a committee that will oversee the operation of a dispatching/communications center?

OPINION

The proposed Agreement is directly governed by Tenn. Code Ann. § 7-86-105(b)(6). Under that statute, joint emergency communications operations must be run by a joint emergency communications district, the directors of which are appointed to four-year terms. Membership on the committee contemplated by the Agreement does not meet this requirement. In addition, the Agreement provides that the Tennessee Emergency Communications Board may arbitrate among the parties regarding the distribution of assets if the Agreement is terminated. This agency does not appear to have the authority to carry out this provision. Finally, the Agreement provides that the City and the County will indemnify other parties and their employees, agents, or consultants from liability, and it authorizes the City and the County to extend insurance to these entities. No statute authorizes these provisions.

ANALYSIS

This opinion concerns the authority of a 911 emergency communications district to enter into an agreement with a county government to create a committee to oversee the operation of a dispatching/communications center. The request includes a copy of an agreement that is currently being considered by the board of directors of an emergency communications district and the Sequatchie County Commission (the "Agreement"). The Agreement also provides for the City of Dunlap to elect to enter into it. The purpose of the Agreement is to protect the citizens of the county by implementing a system of enhanced 9-1-1 communications and to provide for radio communication between and among emergency service agencies serving the county by operating a communications center that will assist fire and police departments, the Sheriff, EMS, and rescue agencies to respond to calls for emergency assistance more rapidly. The Agreement establishes a Central Communications Committee (the "Committee"), made up of certain county officials who serve *ex officio* and two members of the emergency communications district board, to be elected by

the Board. If the City joins the Agreement, then the Committee includes the City police chief and the City fire chief.

Under the proposed Agreement, the Committee is invested with all authority necessary to operate a 9-1-1 communications center. The Agreement does not further describe the function of the communication center, but its purpose appears to be as a single communications center operated for the benefit of the County, the City, and the emergency communications district. The County must approve the Committee's budget. The County, the district, and the City each contribute toward the cost of the center. The district is required to pay all required costs under revenue standards established by the Tennessee Emergency Communications Board (the "State Board"), and, subject to the availability of funds, may contribute additional amounts. The County and the City pay a portion of the net amount of the total approved budget after deducting the district's contribution. The Agreement has a four-year initial term, with automatic renewal terms of four years thereafter.

Section 12 of the Agreement contains termination provisions. Under this section, if the County withdraws from the agreement, the parties agree to meet with the State Board within thirty days of the notice and develop plans for continuing 9-1-1 service and the equitable distribution of assets. The parties may ask the State Board to undertake binding arbitration to resolve any disagreements. If the State Board refuses to arbitrate, or the other parties do not wish to have the matter arbitrated, then the County or City may seek equitable relief in chancery court.

Under Section 13 of the Agreement, the County and City agree to defend, hold harmless, and indemnify the Committee, the district, and members of the governing bodies thereof, as well as all "employees, agents and consultants", from liability and to indemnify them from judgment, loss, or claims arising from operations under the Agreement. The Committee may maintain liability insurance in amounts and coverage greater than the limits of the Tennessee Governmental Tort Liability Act. In lieu of this insurance, the City or County may extend equivalent insurance coverage to employees, agents, and consultants.

Emergency communications districts are formed by a city or county legislative body after a local referendum in accordance with Tenn. Code Ann. §§ 7-86-104 and -105. Tenn. Code Ann. § 7-86-105(b)(6) authorizes local governments to consolidate emergency communications operations. The statute provides:

It is the public policy of this state to encourage the consolidation of emergency communications operations in order to provide the best possible technology and service to all areas of the state in the most economical and efficient manner possible. Pursuant to this policy, if two (2) or more counties, cities, or existing emergency communications districts, or any combination thereof, desire to consolidate their emergency communications operations, *a joint emergency communications district* may be established by the parties using an interlocal agreement as authorized by title 5, ch. 1, part 1, and title 12, ch. 9, part 1; provided, that notwithstanding the language of this subdivision or any other law to the contrary, no such consolidation of

emergency communications operations shall result in the creation of a separate emergency communications district within the boundaries of an existing emergency communications district. Under such an agreement, the funding percentages for each party, and the size and *appointment of the board of directors* of such combined emergency communications district shall be determined by negotiation of the parties, notwithstanding the provisions of this subsection to the contrary; provided, that the board of directors of such combined district shall be composed of not less than seven (7) members to govern the affairs of the district. *The terms, remuneration, and duties stated in subsections (c)-(i) shall apply to any board of directors of any combined emergency communications district.*

(Emphasis added). Tenn. Code Ann. §§ 5-1-113 and 5-1-114 authorize interlocal cooperation between contiguous counties and between counties and cities. Tenn. Code Ann. §§ 12-9-101, *et seq.*, authorize local governments to exercise their powers jointly under an interlocal agreement. The agreement may establish a separate legal entity or entities to conduct the joint or cooperative undertaking. Tenn. Code Ann. § 12-9-104(c)(2).

The Agreement creates the Committee to operate a combined communications center. Under Tenn. Code Ann. § 7-86-105(b)(6), quoted above, a county, a city, and an emergency communications district are expressly authorized to combine emergency communications operations. But the joint operation must be conducted by a joint emergency communications district. In the context of the statute, we think this term means that the operating entity must have all the characteristics of an emergency communications district. The statute provides that the participating local governments are to negotiate the size and *appointment* of the board of directors of the combined emergency communications district. The statute also expressly provides that directors of a joint emergency communications district are subject to the terms specified in Tenn. Code Ann. § 7-86-105(c). That statute provides that directors serve four-year terms, except for initial staggered terms. Under the Agreement, however, the county commission chairman, county emergency services committee chairman, county sheriff, county emergency management agency director, and county emergency medical service director, as well as the city police chief and fire chief, are eligible to service “so long as that person holds the office specified.” Agreement, § 3.A. These provisions are inconsistent with the terms specified in Tenn. Code Ann. § 7-86-105(c). Moreover, under Section 4, *ex officio* members may designate any person to serve on the Committee in that member’s absence. Directors serving under Tenn. Code Ann. § 7-86-105 have no such right. For these reasons, we think a court would conclude that the Committee does not meet the requirements of Tenn. Code Ann. § 7-86-105(b)(6).

The Agreement presents several other legal problems. Under Section 12, for example, the Agreement provides that the State Board may arbitrate the distribution of assets if the Agreement is terminated. This agency is created under Tenn. Code Ann. §§ 7-86-301, *et seq.* The State Board is generally empowered to help local emergency communications districts provide uniform emergency communications services. The State Board also has supervisory authority with regard to financially distressed utility districts. Further, the State Board is authorized, among other powers,

to, “[provide advisory technical assistance to any emergency communications district upon request.]” But neither this provision, nor any other provision in the statutory scheme, gives this agency the authority to arbitrate distribution of assets of a joint emergency communications district in these circumstances.

Under Section 13, the County and City agree to indemnify the Committee, the emergency communications district, and “employees, agents and consultants” for any liability arising out of the Agreement. There is no explicit statutory authority for this commitment. This Office has concluded that a contract provision that requires a local governmental entity to indemnify or hold harmless another governmental entity or a private party beyond the liability imposed upon that entity by law is unenforceable. Op. Tenn. Atty. Gen. 93-1 (January 4, 1993). The Agreement also authorizes the County and the City to extend insurance coverage to the same entities, with the cost deducted from the City or County’s funding share. We have found no statutory authority for this provision.

This discussion is not meant to be comprehensive. This Office has not reviewed the Agreement to determine whether it complies with any applicable private acts or local resolutions or ordinances. Further, in some cases the legality of a particular provision will depend on facts and circumstances not available to this Office. Attorneys for the parties to the Agreement should review it to determine its legality and enforce ability.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Jerry W. Cooper
State Senator
Room 309 War Memorial Building
Nashville, TN 37243-0214